

# How to Form a Water and Sanitation District in New Mexico

## **Final Report**

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*Compiled and Edited by*



NEW MEXICO  
ENVIRONMENTAL  
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## ABBREVIATIONS

Abbreviation	Meaning
W&SD	Water & Sanitation District
NMSA	New Mexico Statutes Annotated 1978
MDWCA	Mutual Domestic Water Consumer Associations
CSDC	County Special District Commission
NMED	New Mexico Environment Department
OSE	Office of the State Engineer
PRC	Public Regulatory Commission

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## INTRODUCTION

Forming a Water and Sanitation District (W&SD) in New Mexico can be a lengthy, complex, and expensive process. This manual was developed to assist communities, engineers, attorneys and technical assistance providers to better understand the steps involved in forming a Water and Sanitation District and make thoughtful and informed decisions about the need for a district. The manual is geared towards existing community water associations who are interested in the benefits of forming a Water and Sanitation District, and to new entities.

When a group decides to form a Water and Sanitation District, the group must understand that forming a W&SD is not intended to be a quick process. Therefore, the justification for the formation of a W&SD must be clear. The advantages and disadvantages of forming a W&SD should be compared and contrasted. The formation of a W&SD can have an impact on rate structures and other utility fees. These impacts should be clearly defined prior to moving forward with the formation of the W&SD. In order to review these items and to accomplish all the steps necessary to form the W&SD, if that decision is made, a working committee should be established.

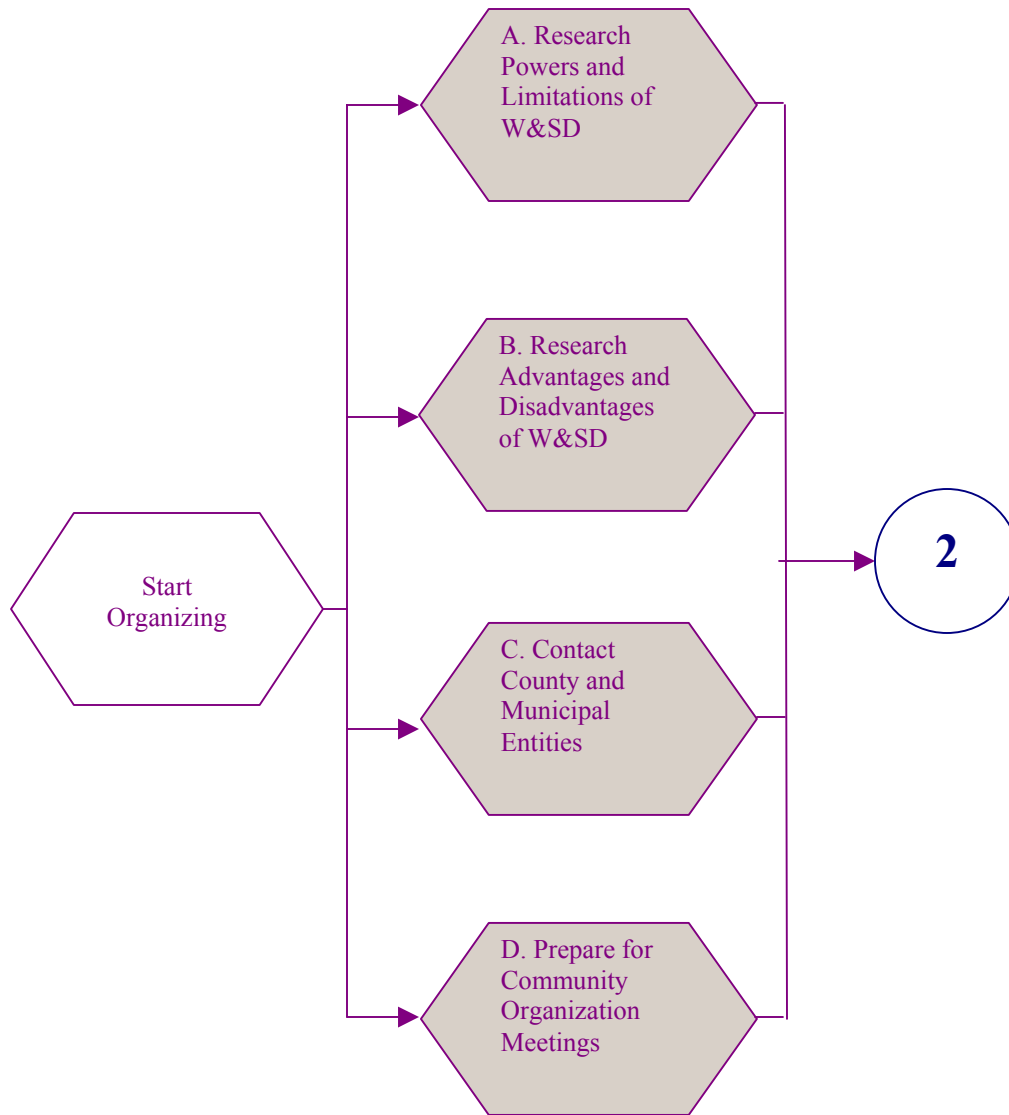
While undertaking the process of forming a W&SD, it is important to have a “champion” person or entity that has a clear understanding of the steps involved and the determination and resources to facilitate the discussions necessary. It is also important to include representatives of various groups and agencies early on in the process to avoid surprises.

Because many of the tasks can be performed simultaneously and because some tasks may take longer than others and could require a “loop” to return to an earlier task and discussion to determine agreement or a response, a flow chart has been developed to help illustrate the process. Each section begins with a flow chart of the elements described in that section. Appendix A contains the complete flow chart.

This Manual is not intended to replace legal advice, but rather to help communities gain an overall understanding of the process. In fact, legal counsel is required in the later phases of forming a W&SD.

An attorney who was involved with a community forming a W&SD from beginning to end has provided, as an example, the correspondence that took place throughout the process. The first letter the attorney submitted to the community committee for forming a W&SD briefly outlines the process the committee would be taking to form a W&SD. This letter is available for reference in Appendix B1.

## SECTION 1: ORGANIZING



## SECTION 1: ORGANIZING

The first step in forming a Water and Sanitation District (W&SD) is to organize the group, area, communities, or other logical coalition of interested people. There are at least four tasks to be accomplished in this initial organization step, but there may be more depending upon the proposed W&SD. All four tasks can be worked on simultaneously. The time needed for this step will depend on the group and its need to discuss the various concerns, from consensus on, going forward with a W&SD formation, and identify the champions who will form the core working group during the longer process needed to establish a W&SD. Legal counsel is not essential at this point, but an attorney will be mandatory in later phases, so it would be a good idea to find and hire a representative at this point in the project.

### A. Task 1: Research Powers & Limitations of Water and Sanitation Districts

The New Mexico state law governing W&SDs is found in New Mexico Statutes Annotated 1978 (NMSA), Chapter 73 Special Districts, Article 21 Water and Sanitation Districts.

Since a W&SD is different than other types of organizations, in particular Mutual Domestic Water Consumer Associations (MDWCA), the group proposing formation of a W&SD needs to thoroughly understand the different powers and limitations. A W&SD is either a state entity or a county entity depending upon the process chosen during the formation phases. If organized by citizen petition, then the W&SD is a subdivision of the state. If organized by county petition, then it will be a subdivision of that county.

State law will apply in full to a W&SD, including the Election Code. A W&SD is NOT a corporation or quasi-public entity and, as a governmental organization it will be fully open to the public. This distinction is important because the compliance burden is different for other types of organization, especially MDWCA's or private cooperatives and non-profits. General powers are set out in NMSA § 73-21-16. To offset the higher compliance burden, districts generally have more extensive powers than other types of organizations. Many of the W&SD powers are highlighted in 1 – 11 below, and a copy of NMSA § 73-21-16 is found in Appendix C1.

1. Standard business powers;
2. Eminent domain;
3. Construct & maintain facilities on public lands;
4. Fix and increase or decrease water/sewer rates, tolls or charges;
5. All rates, tolls and charges constitute a perpetual lien on and against property served, which may be foreclosed and property may be sold for delinquencies;
6. SHALL shut off or discontinue service for delinquencies in payments;
7. Prescribe and enforce rules and regulations for connection/disconnection of properties to/from district facilities;
8. Compel owners of inhabited property within the district to connect to the district's wastewater line within 60 days after written notice, provided the wastewater line is within 400 feet of dwelling; if the property owner fails to connect, board can pay to continue a connection and file a lien on property to recover the cost;

9. Level and collect ad valorem taxes on all taxable property in district;
10. Board may issue bonds upon approval of majority of taxpaying electors (voters) in district voting on the question;
11. Implied powers of a municipality as well as any powers necessary to carry out the powers specified in the statute.

## **B. Task 2: Research Advantages, Disadvantages, and Differences between Water and Sanitation Districts and other Forms of Organization**

Any group proposing a W&SD needs to compare the differences between the organization types and then to apply those differences to their particular situation to determine the advantages and disadvantages of a W&SD for their proposal. There is no set rule here because a W&SD can be either a positive or negative change for a specific situation depending on the issues for that community group and the problem(s) they are trying to solve.

Some things will not be different. For example if the W&SD is to supply drinking water and meets the definition under the Safe Drinking Water Act, it must comply with all applicable federal and state requirements, just as a MDWCA or Cooperative is required to do. Likewise the Clean Water Act and all applicable federal and state requirements for wastewater systems would apply regardless of the organizational structure.

However, MDWCAs do enjoy immunity from certain suits under the State Tort Claims Act, while W&SDs will not benefit from this immunity. MDWCAs cannot tax to raise funds, but W&SDs have this power unless they self-limit. W&SD can file liens against property and must disconnect delinquent accounts, while Mutual Domestics must file contract claims in State court if Members do not comply with their contractual agreements under the bylaws, rules, and user agreements. Members can leave a MDWCA, but all property in a W&SD remains under its jurisdiction and after Court approval, a person cannot secede from a W&SD, is subject to property tax levies and can be forced to connect to water and wastewater facilities.

These differences can be perceived positively or negatively depending on the issues of the area proposing a W&SD and should be discussed thoroughly before moving to the formation phases so that the entire community has a clear understanding of how things will change under this new organizational structure.

## **C. Task 3: Contact County and Municipal Entities with the Intent to Form a W&SD**

It is important to contact representatives from all counties and municipalities that could be affected by the formation of a W&SD early in the process. The group proposing the formation will not want to be surprised later by a county or municipal intent that overlaps or conflicts with the proposed W&SD. In addition, a municipality may be within a W&SD and/or a W&SD may answer to the county, depending on the boundaries and how the W&SD is formed. Persons from these counties and municipalities will ultimately serve as part of the County Special District Committee that will later determine approval of the W&SD.



#### **D. Task 4: Hold Community Organization Meetings**

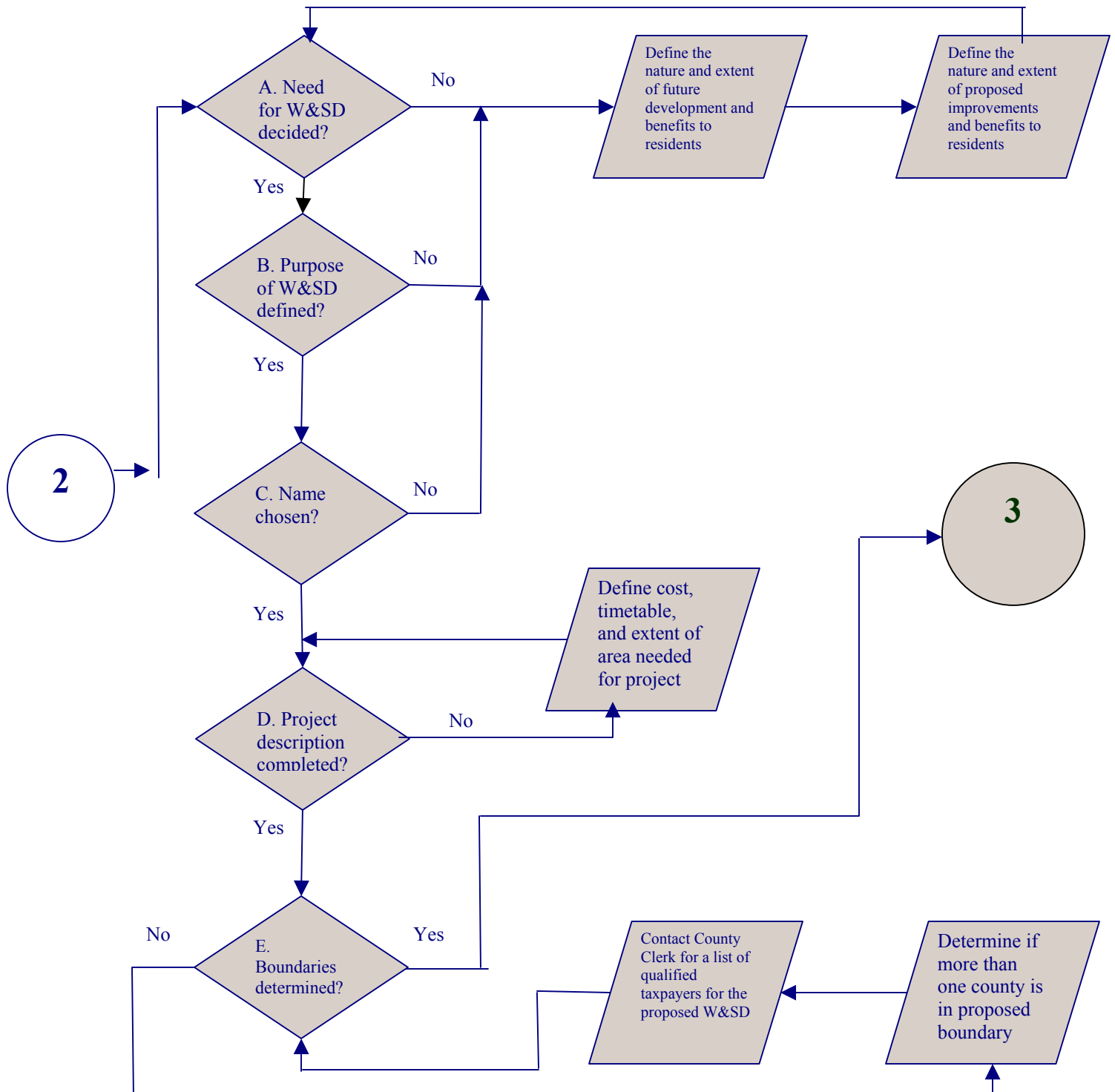
One or more community meetings will be necessary to discuss the information obtained in tasks A, B, and C above. There are five key questions that must be answered in the next project step (Section II. Defining) and it may take several meetings to achieve agreement on these critical elements.

With these key questions in mind, the organizers should determine which people, entities, and agencies will be critical to include in the community meetings. The organizers then need to locate appropriate meeting space and issue invitations. It is important to be as inclusive as possible to be able to have a discussion that includes all the stakeholders.

At the first meeting, along with outlining and considering key questions, the group should discuss a timeline, how often to meet, and to identify any other people or group not represented who should be invited to participate.

Once the decision to go forward has been made, an engineer will also be required if new, expanded, or modified physical infrastructure projects are proposed, because formal design plans will be needed for the Petition phase of the project. A hiring process that conforms to NMSA § 13-1-120 (Procurement Code) should be undertaken as part of the community organization meeting(s).

## SECTION 2: DEFINING



## **SECTION 2: DEFINING**

This step requires that five (5) key questions be answered before proceeding to the petition development step because all of this information will be required. These questions can be answered simultaneously during the community organization meeting, but all must be complete before moving to the next step. Some questions may take longer than others and could require a “loop,” which means returning to an earlier question and discussion to determine agreement on a response.

### **A. Key Question #1: What is the need for creating a W&SD?**

A need must be clearly articulated for the W&SD and the statute specifically asks that two (2) questions be answered to establish this element. These questions are:

1. What are the nature and extent of proposed improvements to benefit the persons currently residing within the boundary of the proposed W&SD?
2. What are the nature and extent of expected future developments and benefits to current and future residents of the proposed W&SD?

In addition, counties are instructed in NMSA § 4-53-8 (a copy is included in Appendix C2) to consider several factors during the county hearing. The proposal should also clearly provide this information.

To respond to these questions, an engineering report and/or legal analysis may be required. It is imperative to be as thorough and exhaustive as possible in enumerating the benefits of the project now and for the future. This will be a key defense during the District Court hearing in which persons residing in the area can ask to have their property excluded from the W&SD. The defense to those claims will be that the individuals will receive benefits from the project and therefore should be required to pay for and participate in the project. For example, if the project proposes a wastewater treatment facility that will eliminate septic tanks and prevent groundwater pollution over a large area, all who reside in that area and depend on clean groundwater for a drinking supply would benefit from the project and should be a participant.

### **B. Key Question #2: Has the purpose of a W&SD been defined and determined?**

W&SDs can be formed to serve a large number of purposes. The list is provided in NMSA § 72-21-3 (a copy is provided in Appendix C3). It is recommended that the purposes not be limited to only one immediate project, communities should think long-term and include potential future projects that may be proposed. For example, if the W&SD wants to provide drinking water, but not wastewater treatment, it would be advisable to not restrict the purpose only to water supply. At some future date the W&SD may propose wastewater collection and treatment. If it has that original in the purpose, no modification is needed. If the purpose may change in the future and such expectations are not included in the original Court decree,

the entire hearing process will have to be repeated for the change. So, it is much better to include all potential purposes that the W&SD may want to serve in the initial petition, even if the project is not funded or contemplated in the near future. The statutory purposes of W&SDs are:

1. Purchase, acquire, establish or construct waterworks to supply water for domestic, commercial & industrial purposes by any available means to persons within and without District Boundaries (shall have power to extend water lines outside of district to secure water source or to supply water to any land, person, firm or corporation);
2. Purchase, acquire, establish or construct sanitary sewers or a system of sewage disposal, garbage or refuse disposal;
3. Purchase, acquire, establish, or construct streets, street improvements, including without limitation grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic control equipment, and all appurtenances and incidentals or any combination thereof, including real and other property therefore;
4. Establish or construct park and recreational improvements;
5. OR any combination of the above.

### **C. Key Question #3: What is the name of the W&SD?**

The name should be compatible with the purposes, need and location and distinguish the W&SD from others in the State. The last part of the name must be “Water and Sanitation District.”

### **D. Key Question #4: Has a project description been completed?**

Several elements of any proposed project must be clearly defined before moving to the petition formation step. These include general description of improvements to be constructed and installed in the W&SD; cost; completion time table; and in particular the extent of area needed for the project. The latter is essential to justify the extent of the W&SD boundaries and to defend the boundaries from petitions to shrink or remove specific properties from the W&SD, which petition would be reviewed during the hearing phases of the project.

### **E. Key Question #5: Have contiguous boundaries been determined?**

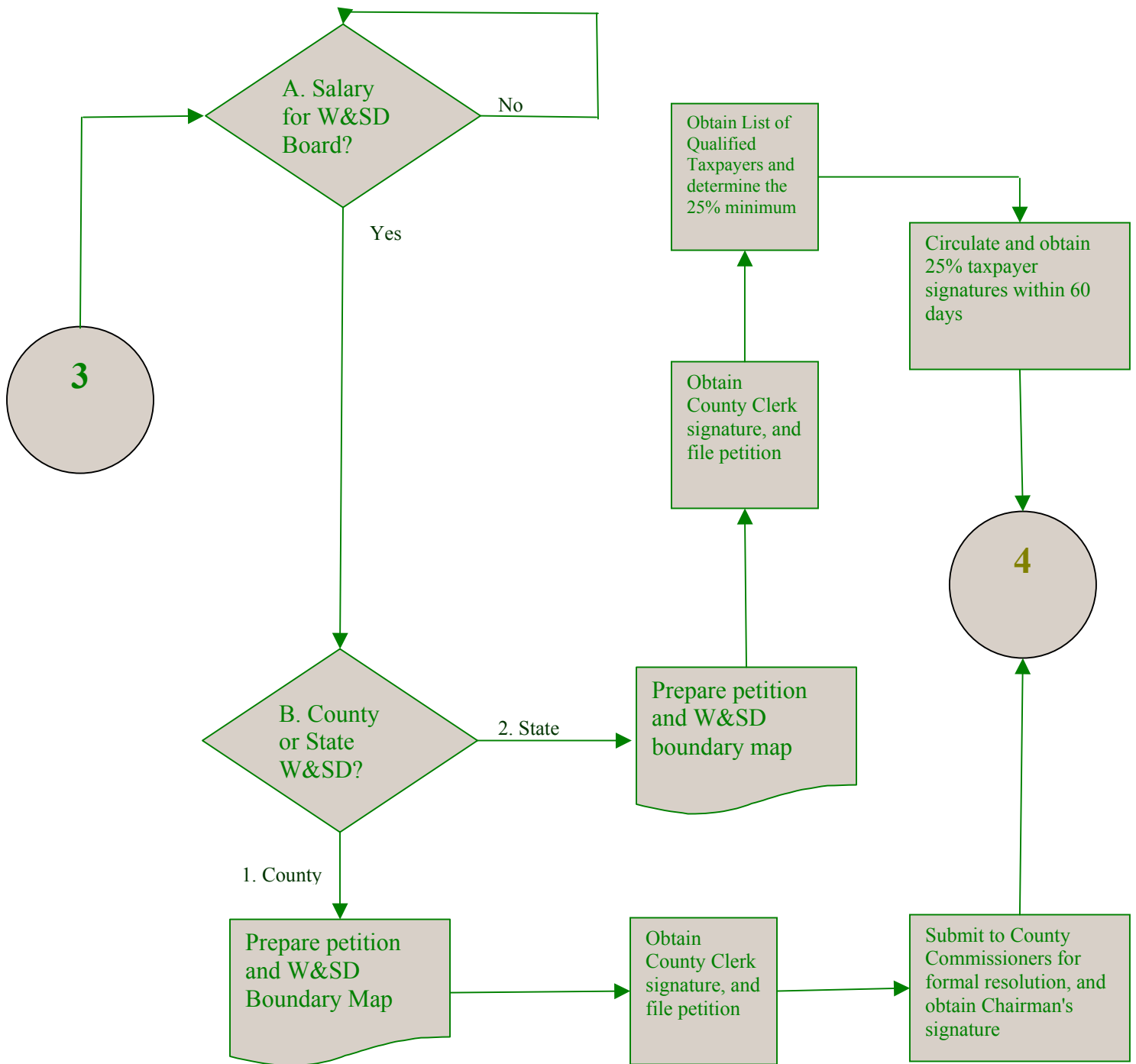
A map of the proposed W&SD is essential for the petition, so the boundaries of the proposed W&SD must be determined. The boundary must be continuous (no holes or discontinuities). And, if the area crosses a county line, this must be known to complete later steps in the process because the majority of land will determine the county and court hearing locations. If the area crosses a county boundary line, the only procedure is to create a State W&SD. To

create a County W&SD, all of the contiguous properties must be wholly contained within that county.

At this point, the County Clerks of all counties involved in the proposed boundary should be contacted for a list of the names and the number of qualified taxpayers within the proposed area. (For an example letter, see Appendix B3.) This allows determination of how many signatures would be required for the petition if a State W&SD is to be formed, and for all W&SDs, is the list of persons who will need to be notified of the upcoming hearings. If this task is not completed at this step, it will be required during the petition process and since it may take some time, it could delay the subsequent steps significantly. The task that can be started as soon as the boundary is determined and that will expedite future actions.

It is important to note that the current definition of tax paying electorate requires research to determine who qualifies. The example letter in Appendix B3 can help clarify many questions the County Clerk may have.

### SECTION 3: PETITION



## SECTION 3. PETITION

The formal petition must be drafted in accordance with the statutory requirements. A boundary map is also finalized at this step. The petition is then filed with the County Clerk where the W&SD is located. If more than one county is involved, the petition should be filed with the County Clerk of the principal county in which the Special Hearings will be held and the State District Court which will decide and issue the final decree is located. Once the petition is drafted and filed with the County Clerk, there are two processes depending on whether the group is forming a State or County District. A State entity W&SD may be within one or more counties. A County entity W&SD must be contained within one County. At the conclusion of this step, the petition is ready for consultation with applicable county and state agencies and submittal to the County Special District Commission.

### A. Decide on Proposed Salary for Board Members

If the W&SD wants to compensate its Board Members, that decision must be explicitly stated in the petition. It is not required to provide compensation, but if the group wants to pay more than reimbursement expenses, it needs to decide that prior to drafting the petition. The limitation of salary is set out in NMSA § 72-21-6(B)(7) which states "...no member of the board shall receive a salary in excess of five dollars (\$5.00) per day for each day while in actual attendance upon his duties...."

### B. Determine Whether to Propose County or State W&SD

#### 1. County Process

If the W&SD is going to be a county entity and meets the requirement that all contiguous lands are located within a single county, then the petition and the boundary map are submitted to the County Clerk for signature. The petition is then submitted to the County Commission. If the county agrees with the W&SD formation, it must pass a formal resolution at an open meeting and the Chairman must sign the petition. The group is now ready to proceed to the Consultation and District Court steps. No citizen signatures are required.

#### 2. State Process

If the W&SD is to be a State entity or it includes lands in more than a single County, the Petition and Boundary Map are submitted to the County Clerk (of the principal county

### Petition Contents

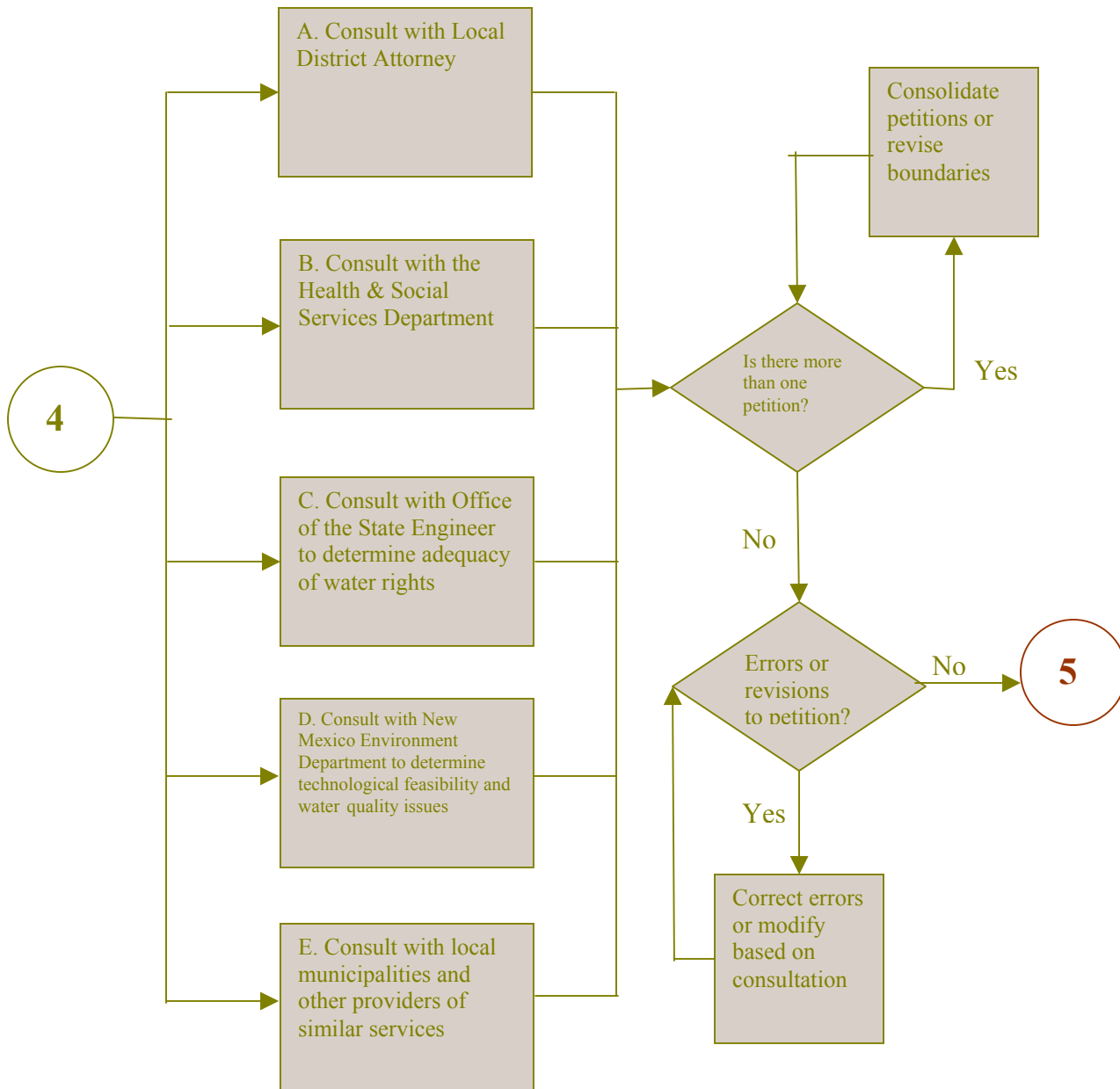
The Petition will be composed of all the decisions and work done in the Organizing and Defining stages. If that work was completed, this should be a straightforward step. However, if any prior decisions were not made or disagreements arise, then additional community meetings and discussion may have to occur at this stage. A sample petition is found in Appendix B2. Elements Required in NMSA § 73-21 (Appendix C1)

1. Name of proposed district, including words "water and sanitation district;"
2. General description of improvements to be constructed or installed within and for district;
3. Estimated overall cost of proposed improvements;
4. Estimated time table for completion of all intended improvements;
5. Need for creation of W&SD and construction or installation of improvements stating:
  - a. Nature and extent of anticipated use of improvements by persons presently residing on land within district
  - b. Nature and extent of anticipated use of improvements due to future development;
6. General description of boundaries or territory to be included in W&SD, with enough certainty to enable property owners to determine whether or not their property is within the proposed boundary;
7. Salary proposed for board members, if any, but no member shall receive more than \$5.00 per day for each day while in actual attendance of his duties; and
8. Request for the organization of the W&SD.

in which the Special Hearings will be held), which has jurisdiction for signature and filing. If a list of qualified taxpayers for all lands within the boundary has not been obtained in an earlier step, it must be completed at this point. If significant time has passed, or significant changes have taken place since obtaining the list, an updated list may be required. The petition is then circulated to the qualified taxpayers on the list obtained from the County Clerk(s). At least twenty-five percent (25%) of the qualified taxpayers must sign the petition within a 60-day period in order to proceed with forming a State District. The most current definition of Qualified Taxpayer (in the state statutes) must be used and does not include officers, directors, or shareholders of any business with an economic interest in subdivision and sale of land within the proposed District. If not enough signatures are obtained, the process must begin with a new filing with the County Clerk and a recirculation of a new petition. Revisions to the petition may be needed if public opposition was encountered at this point. It is more likely that the 60-day period will be the difficulty, this is where the community champions are necessary to rally support for the petition. This, of course, can be done with more community meetings or other community events to obtain the requisite number of signatures.



## SECTION 4: CONSULTATION



## SECTION 4: CONSULTATION

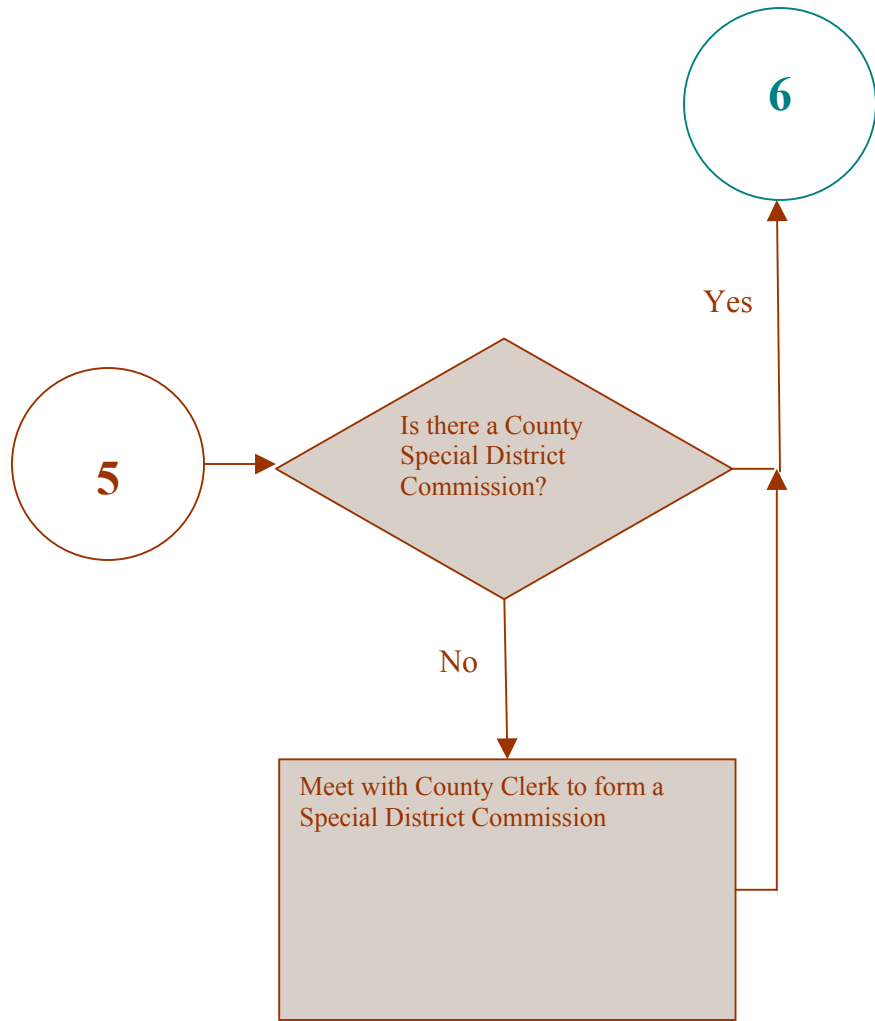
Many entities must be consulted by the County Special District Commission or the State District Court during the formation of a W&SD (see list below). Beginning the consultations when the petition has been signed by the County Commission Chairman, or after twenty-five percent (25%) of the voters have signed, will speed the process. The consultations can occur simultaneously and such interaction helps promote a thorough review of the project proposal and recommendations to improve it. The entities that are consulted will eventually be invited to the hearings and will be required to make formal pronouncements regarding the project, so the earlier they are brought into the process and discussions the better. In some cases, consultation may have begun much earlier. For example, during the project development phase, consultation with the New Mexico Environment Department (NMED) would be beneficial in formulating a sound project idea. Some entities will not want to be consulted until more project details and specific plans are known. There is no rule about when to begin, but it is recommended that the consultation begin, even if informally, before the formal hearings occur. The hearing is not a good time to hear objections to the project from the County and State agencies that will be asked for their formal opinions in those forums. It is better to work with these agencies BEFORE the hearing and to address any concerns before the formal proceedings begin.

The minimum agency consultations (and certainly more can be consulted if applicable to the project) are:

- A. Local District Attorney;
- B. County Health/Social Service Agencies;
- C. Office of the State Engineer—adequacy of water rights for project;
- D. New Mexico Environment Department—technological feasibility and water quality issues; and
- E. Local municipalities (and presumably other water systems that offer similar services, such as Mutual Domestic Water Consumer Associations, Water Cooperatives, Non-Profits and other Districts)

The group organizers should review the petition for errors and revisions. It is also a good time to see if more than one Petition exists for the same proposed area. If more than one is submitted to the District Court, the court has the power to consolidate them on its own. To avoid this, the groups may want to review their proposals and determine if consolidation is a possible alternative at this time. If more than one petition is filed and the groups are adversarial to each other, then the hearing steps will be longer and more costly. It would be better to resolve differences at this stage.

**SECTION 5: COUNTY SPECIAL DISTRICT COMMISSION  
FORMATION**



## **SECTION 5: COUNTY SPECIAL DISTRICT COMMISSION FORMATION**

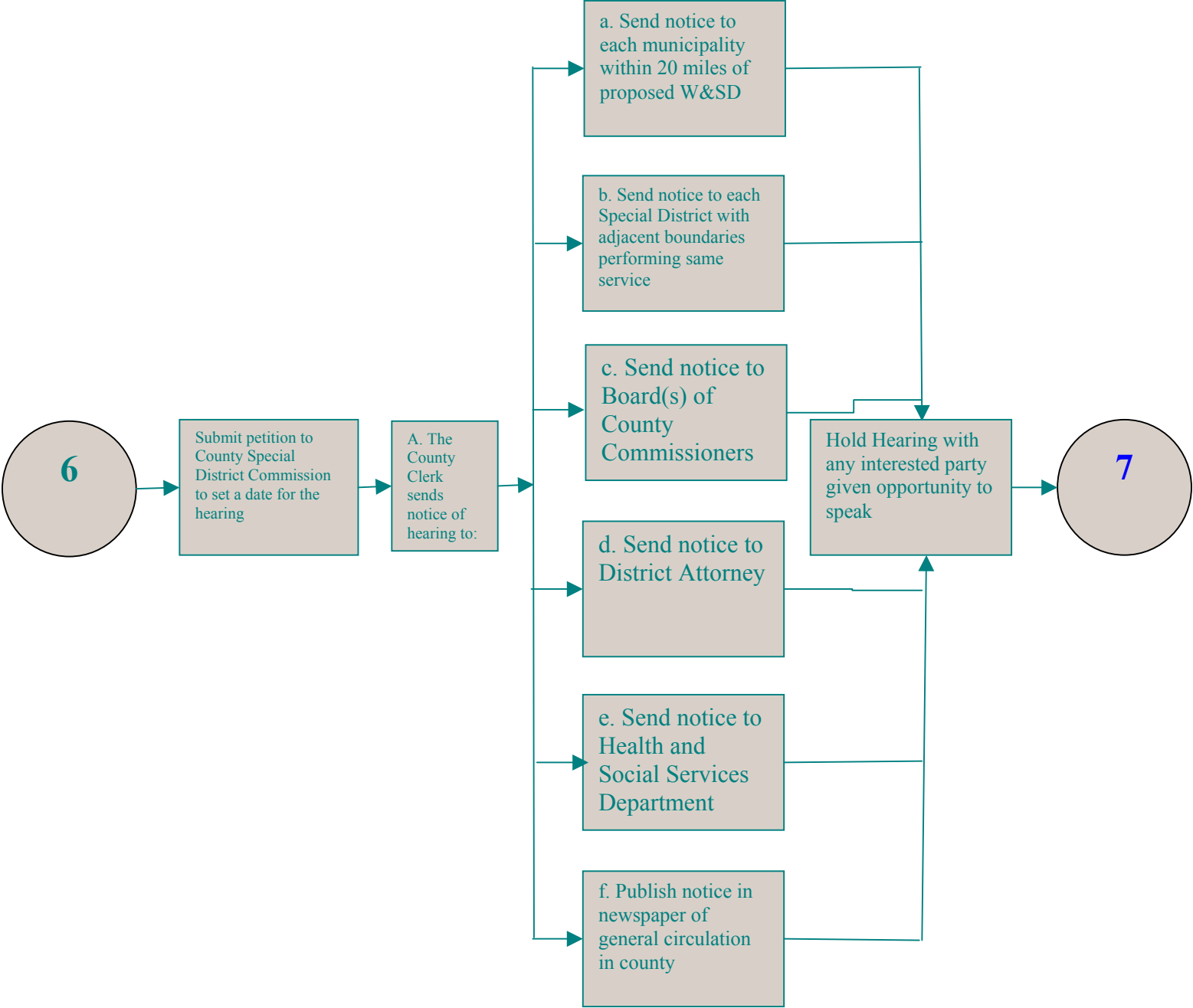
The Petition must be presented to each County Special District Commission of each county that has land within the proposed District, so each county must have a commission. (See NMSA. §§ 4-53-9 in Appendix C4). A hearing must be held before the Petition can be submitted to the District Court for formal procedures. This step occurs whether or not the proposed District is a state or county entity. If there is no standing County Special District Commission, one will have to be formed. (An example of a letter requesting the County Clerk's approval of the petition prior to distribution and advising the clerk on the necessity of forming a Commission is in Appendix B3). This can be done with the assistance of the County Clerk. Once the Commission is formed, formal notice of a hearing must be issued in a particular manner. A formal hearing conducted to hear objectors and proponents of the proposed District and determine if additional revisions may be appropriate in the petition. If the Special District Commission does not approve the proposal, the petition can be revised and resubmitted. However, a petition cannot be submitted to the District Court until the CSDC approves the Petition. N.M.S.A. §§ 4-53-1 to 4-53-11 governs Special District Commissions and has the following requirements.

### **Formation of County Special District Commission**

If the county has no Special District Commission, the petition shall be submitted to the County Clerk, and the applicable county and municipalities SHALL form a Commission.

1. The Commission consists of five members:
  - a. Two members appointed by the Board of County Commissioners, each of whom shall represent the county and shall be a county officer;
  - b. Two members appointed by the mayors or chief executives of all municipalities within the county at a joint meeting, each of whom shall represent the municipalities and shall be a city officer (an example letter to the mayors of municipalities in the county requesting formation of a W&SD can be found in Appendix B4); and
  - c. One member appointed by the other four members of the Commission who shall be Chairman of the Commission and shall represent the general public in the county. If within five days following their appointment, the four other members of the Commission fail to appoint the fifth member, the District Court of the county in which the Commission is located shall appoint the fifth member within ten days following the date of the appointment of the four other members.
2. Term of Office is four years except when a county or city officer leaves office their terms automatically expire or they can be removed by the appointing authority.
3. Vacancies are filled in the same way as formation.
4. Commissioners serve without compensation, but can be reimbursed expenses.

## SECTION 6. COUNTY HEARING



## SECTION 6. COUNTY HEARING

Once a County Special District Commission is formed, a formal hearing must occur. This is an open hearing and anyone can come in to speak for, against, or say whatever they like regarding the proposal. Specific entities are invited to present, including the consultation agencies discussed in Section 4. Publication of the hearing must occur by newspaper. Publication means once a week for 3 consecutive weeks in at least one newspaper of general circulation in the county in which all or a majority of district is proposed. (Example documents for submitting a form of notice of Special District Commission Proceedings for publication are contained in Appendix B5) The combined requirements of N.M.S.A. §§ 4-53-5 and N.M.S.A. §§ 73-21-8 are:

The County Special District Commission MAY review and approve, disapprove with or without amendment, all, part, or conditionally approve any proposal to create (or dissolve, consolidate or merge) special districts within a county. Any proposal SHALL be submitted to the County Special District Commission before election or court hearing to create a new W&SD.

### A. Hearing Notice

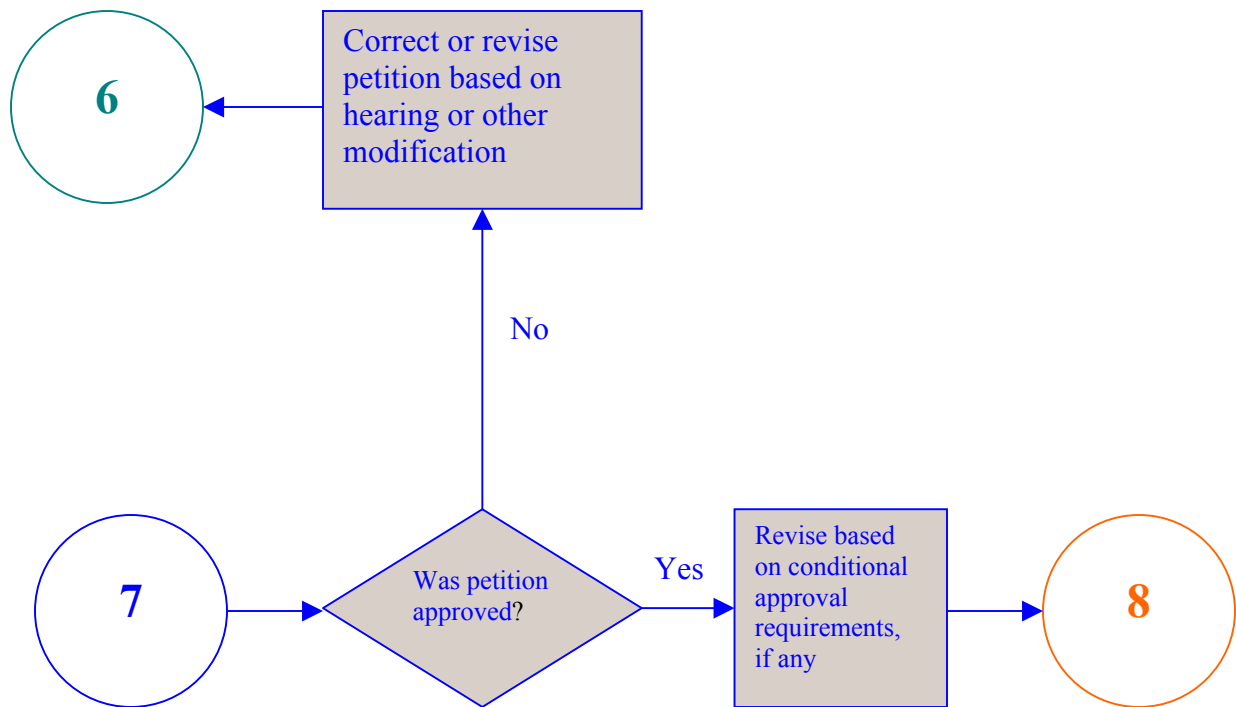
Upon receipt of the petition, the County Clerk must NOTIFY the following:

1. Each municipality within 20 miles of proposed district territory;
2. Each special district with boundaries adjacent and performing same type of service proposed in new district;
3. Board of County Commissioners (if more than one, each one);
4. County Attorney General (Example documents for submitting notice to each of these groups can be found in Appendix B6); and
5. Health & Social Services Departments of each County;
6. Publish notice in newspaper of general circulation in county of receipt of proposal and intention to hold public hearing to create district (not less than 20 or more than 40 days from receipt of notification of proposal). (Example documents for submitting a form of notice for publication are contained in Appendix B5)

### B. Hearing

At the public hearing the County Special District Commission shall hear any interested party who has made a written request to testify and the Commission shall receive a copy of any consultation report. The rules for conducting the public hearing are set by the Commission. (For an example Notice of Hearing see Appendix B7)

## SECTION 7. PETITION REVISION AFTER COUNTY PROCESS



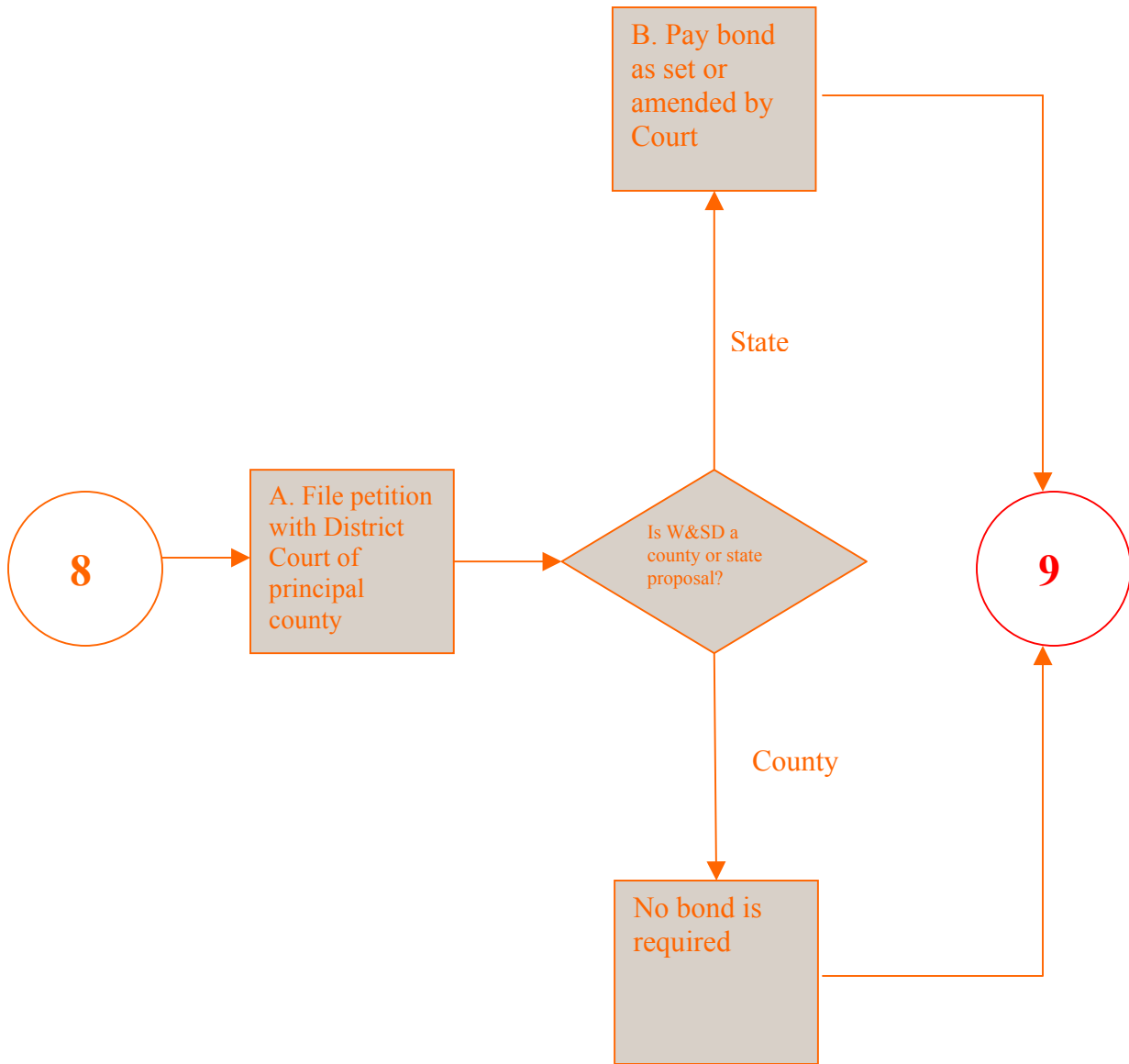
## **SECTION 7. PETITION REVISION AFTER COUNTY PROCESS**

If everything goes well, and especially if the consultation process was done early and often, and communication in the community was open and agreement reached with some consensus, the County Special District Commission will approve the petition as written. However, it is more likely that the petition will have to be revised at this stage. If revisions are significant, the petition may have to go through a second Commission hearing. This loop can occur as many times as necessary to obtain Commission approval. If revisions or modifications are not significant, the Commission can give a conditional approval that would require petition revisions before submittal to the District Court. This would eliminate the need for a second or multiple public hearings at this level.

If the petition is widely opposed by the public, municipalities, or other organizations in the area, it may not be possible to obtain approval. If that occurs the process may have to go back to a much earlier step, perhaps even to the beginning discussions of the purpose and need for the W&SD.



## SECTION 8: DISTRICT COURT FILING



## **SECTION 8: DISTRICT COURT FILING**

Once the County Special District Commission has approved the petition, the petition is filed in the District Court in the principal county where the proposed Water and Sanitation District is located. (For an example of a Petition to Authorize Formation of a W&SD see Appendix B8) At this point, a bond is required if it is a state district. If the district is a county entity, then no bond is required. If more than one petition is filed or errors are found, the court may consolidate or permit corrections at any time during the District Court step of the process. The issue of requesting a waiver for the bond is something that should be discussed with your attorney. There is an example letter in where the attorney for the W&SD requests a bond waiver, see Appendix B14.

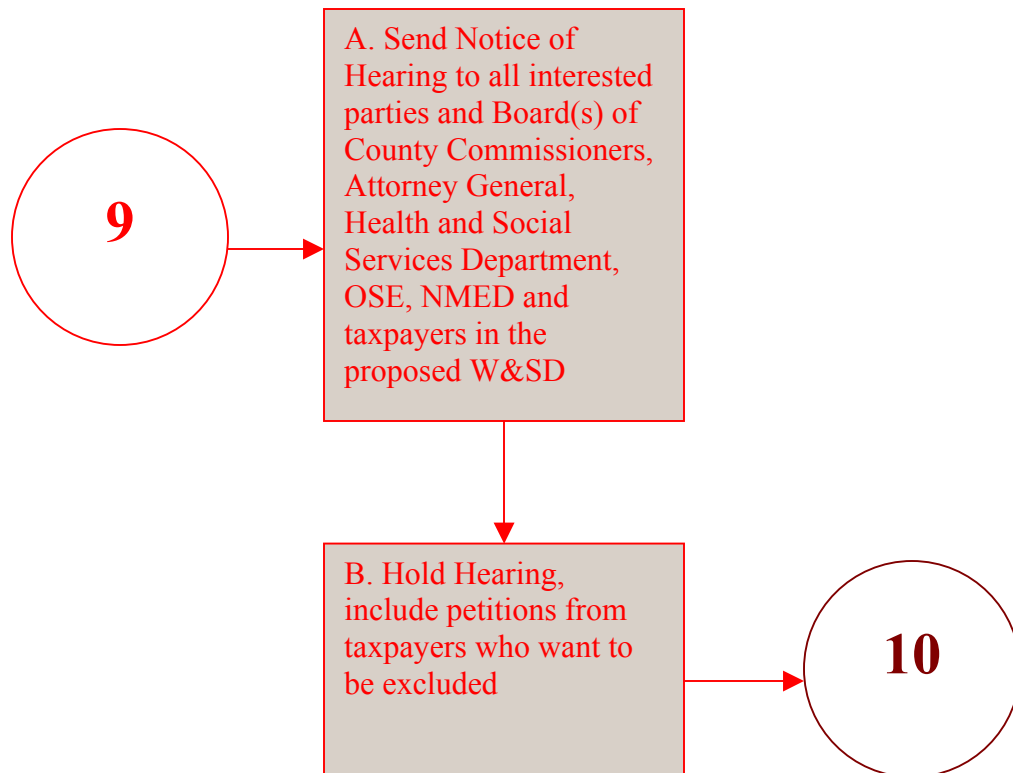
### **A. Filing Requirements**

1. A petition with the requisite signatures will not be void because of defects.
2. The Court may AT ANY TIME permit the petition to be amended to conform to facts and permit correcting any errors, including in the territory or boundary description.
3. If more than one petition is filed for same area, they will be considered together as a single petition and if filed before the hearing, will be considered as if filed on the date the first one was received.

### **B. Bond Requirements**

1. If a bond is required, it must be filed no later than the date the petition is filed with the District Court.
2. Security or bond type must be approved by the court.
3. Bond must cover all expenses connected with District Court proceedings in case the organization proposal fails.
4. Court can request an increase in the bond amount if the initial bond will be insufficient, in which case the petitioners have 10 days to pay the difference.
5. If the bond or the increased amount is not filed or paid in a timely manner, the petition will be dismissed.
6. No bond is required if the petition is made by resolution of the Board of County Commissioners.

## SECTION 9: DISTRICT COURT HEARING



## **SECTION 9: DISTRICT COURT HEARING**

The District Court Hearing is a formal legal proceeding and legal representation is absolutely required at this point. In seeking legal representation, counsel can be researched on the State Bar Association website ([www.nmbar.org](http://www.nmbar.org)). Taxpayers within the proposed District boundary may petition the court to be excluded from the District and are considered adverse parties to the Petitioners proposing the District formation. Formal consultation documents are required from the NMED and the OSE. (For examples of Consultation by the NMED and OSE requests, see Appendix B9 and B10) The local Attorney General, Board of County Commissioners, and the local health and social services departments will all have an opportunity to present evidentiary documents and testimony at the hearing. Formal notice must be given for this hearing just as is required for any Court proceeding. (See Appendix B11 for an example notice of hearing.)

### **A. Notice Requirements**

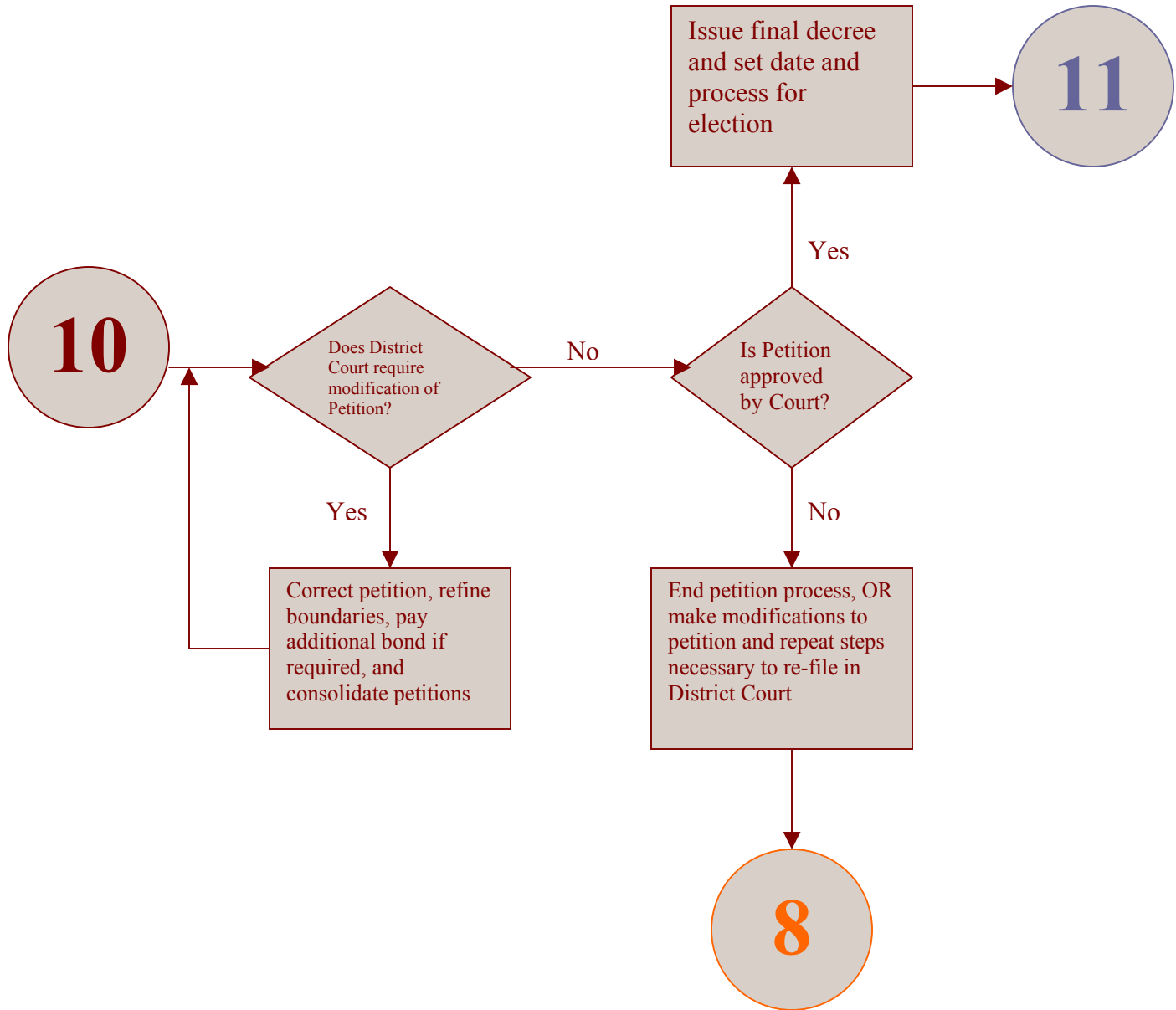
1. The Court fixes place, time for hearing
2. The date cannot be less than 20 days nor more than 40 days after receipt of Decision of County Special District Commission
3. Notice must be sent at least 10 days before hearing
4. Notice is sent to all interested parties (for example letters sent to the following parties, see Appendix B12), but especially:
  - a. Board of County Commission of all Counties involved
  - b. Attorney General
  - c. Health and Social Services Departments of the Counties
  - d. New Mexico Environment Department
  - e. Office of State Engineer
  - f. Taxpayers in the District
  - g. General Newspaper Notice-- Publication means once a week for three (3) consecutive weeks in at least one newspaper of general circulation in the county in which all or a majority of W&SD is proposed. (For an example Court Order Requiring Notice by Publication, See Appendix B13.)

### **B. Hearing Process**

1. On the day of the hearing, the court determines from the County tax rolls the total number of tax paying electors residing in the proposed District boundary
2. The petition will be dismissed if it is not signed by at least twenty-five percent (25%) or more of qualified electors, if a State District--  
OR if it is not signed by the Chairman of Board of County Commissioners if it is a County District  
BUT the petition may be renewed at a later date if properly signed. See Appendix C5 for §73-21-6.
3. The Court hears the petitions of all individuals who do not want to be in the District (such objectors must file their request to be excluded before the hearing).
4. The Court will consult with and request opinions from:
  - a. Office of State Engineer (water rights to support project);
  - b. NMED (meet state regulations and reasonable technology).
5. The Court may deny or request modifications of the Petition, if:

- a. Proposed infrastructure improvements cannot meet regulatory requirements;
  - b. Proposed improvements cannot be implemented within a reasonable time considering federal/state grant/loan application processes;
  - c. There is no need for the proposed improvements;
  - d. The boundary includes land without actual or foreseeable need for the proposed improvements, unless required to be included by federal/state regulations).
6. If the petition appears to be properly signed and presented, the Court SHALL order that the question of whether or not the W&SD organization is acceptable be submitted to taxpaying electors residing within the boundaries as set forth in the Petition as approved or modified during hearing process. If the W&SD is a State District, the initial Board will also be chosen at the Election.

## SECTION 10: PETITION REVISION

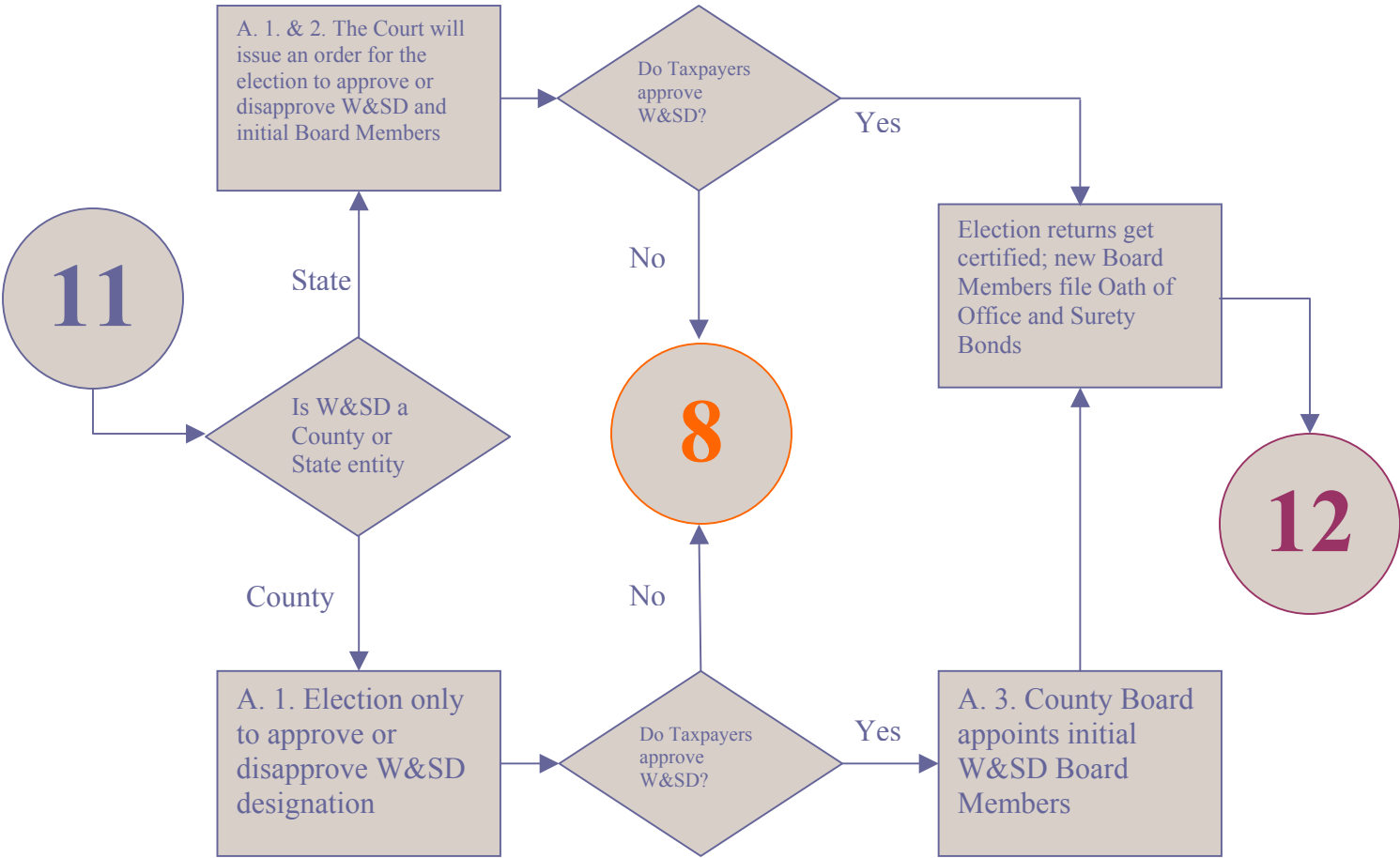


## **SECTION 10: PETITION REVISION**

Once again, if everything goes well, if the consultation process was done early and often, if communication in the community was open and agreement reached with some consensus, all revisions suggested or required by the County Special District Commission have been made, and errors, consolidations, and negotiations concluded with opponents, the District Court will approve the petition as written. However, the Court may require modifications of the boundary if objectors' requests to be excluded are approved or revision of the petition contents is necessary to address concerns stated during the hearing. If revisions are significant, the petition may have to go to a continued hearing or rehearing before the court makes its final determination. This loop can occur as many times as necessary to obtain District Court approval. However, if it takes too many revisions or too much time, the court may dismiss the proceeding and require a re-submittal when the document is ready to be heard by the court.

Again, if the petition is widely opposed by the public, municipalities, or other organizations in the area, it may not be possible to obtain approval. If that occurs the process may have to begin again at a much earlier stage of the process, perhaps even the beginning discussions of the purpose and need for the W&SD.

SECTION 11: ELECTION





## SECTION 11: ELECTION

Once the petition is approved by the District Court, affected taxpayers elect whether or not to approve the W&SD designation and if the W&SD is approved by the voters, the initial board will need to be elected or appointed.

If the W&SD is a county entity, the election by the affected taxpayers will only pose the question to approve or disapprove the W&SD designation. The County Board of Commissioners appoints the initial board members if the voters approve the designation proposition.

If the W&SD is a state entity, the election will ask for approval of the designation and election of the initial board members. If the W&SD is not designated, the process must again restart at an earlier step, most likely the District Court Hearing. If the proposition fails in the election, the bond will be used to pay the proceeding expenses. If the proposition is approved, the bond will be returned to the Petitioners.

### **Election requirements**

1. The Court Order will designate one (1) or more polling places within the proposed W&SD boundary;
2. Three (3) taxpayers are designated as election judges and two (2) taxpayers are designated as election clerks;
3. The Court Clerk sets the election date, time and place with at least 20 days notice required prior to the date set;
4. The election is held and conducted in the same manner as general State elections, meaning it must follow State election code (§ NMSA Chapter 1, Elections);
5. The list of electors is developed from the tax records registry used for the Hearing or an affidavit of qualification provided by any elector who was not on the initial District organization list submitted to the Court.  
(For an example Request for Court Motion to Publish Notice of Election, See Appendix B14.)

### **A. Contents of Election**

1. In either a State or County W&SD entity, the election requires voters to say Yes or No to the W&SD as designated by the Court order.
2. If the taxpayers vote Yes to a State District proposed by citizen petition, then the ballots also require voting for three (3) taxpayer electors as the first W&SD Board of Directors, one for a 1-year term “until the first biennial election” (§ 73-21-9 H), one for a 2-year term and one for a 4-year term.
3. If the Petition is made by the County Commission, then taxpayers only vote Yes or No and the Board of County Commissioners appoints the first W&SD Board members.  
(For an example Election Ballot, See Appendix B15)

### **B. Approval of Election Results**

1. Judges certify election returns to the court.
2. If a majority of taxpayers vote in favor, the court declares the district organized and gives it a corporate name.
3. The Court designates the first elected board if the W&SD was formed by citizen petition. The Board of County Commissioners designates the first W&SD board if the W&SD was formed by county petition.
4. Within 30 days of declaration by court, the clerk of the court transmits to each County Clerk and Recorder the copies of the findings and final court decree.
5. The clerk of the court files the findings and decree with the Public Regulatory Commission as the initial Articles of Incorporation.
6. New board members file an oath of office & corporate surety bonds (at the expense of the W&SD for at most \$1,000). (For an example Court Order Declaring the Formation of a W&SD, See Appendix B16.)

## SECTION 12: BOARD FORMATION AND ORGANIZATION

12



A. W&SD Board  
organizes itself,  
and sets meeting  
schedule

## SECTION 12: BOARD FORMATION AND ORGANIZATION

At this step, the Board organizes itself and sets its meeting schedule to begin producing the documents required to run the new W&SD. (For an example Declaration of Candidacy form, See Appendix B17.)

### Meetings

- Monthly.
- Open meetings at designated time and place (For an example Open Meetings Act Resolution, See Appendix B18.)
- Quorum is majority.
- Vacancies filled by board if citizen petition (State entity) until next election;  
Or, if petition by County, then Chairman of County Board of Commissioners appoints members to fill vacancy to fill term;  
And if either fails to fill vacancy within thirty (30) days, the Court has the power to appoint.

### Board Actions

- Chooses a Chairman and officers.
- Adopts a seal.
- Records all proceedings as minutes, certificates, contracts, bonds, and all acts.
- Budgets must be submitted to Local Government Division for approval.
- Decide if they will make the District subject to the Public Regulatory Commission (PRC) utility regulations. If not, it will still file rates, tolls and charges to the PRC. Regardless if the W&SD makes itself subject to the PRC utility regulation, if the PRC receives a petition from twenty-five (25) of the taxpayer-electors or five percent of the taxpayer-electors of the W&SD, whichever is less, protesting the rates, tolls or charges, the PRC shall hold a hearing pursuant to its rules within thirty (30) days.

### Board Requirements

- Records are kept open for inspection of all property owners.
- Treasurer uses strict and accurate account with corporate fidelity bond greater than \$5,000.
- Board serves without compensation unless provided by the Petition and Court order of creation.
- Board shall be reimbursed for actual/necessary expenses.
- Removal of W&SD Board members only by petition to court upon showing of cause and after notice for hearing.

### Subsequent Elections

State	County
Held on second Tuesday of January in second calendar year after organization and every second year thereafter if a State District.	If created by County petition, then elections are held one year after organization and every second year thereafter.
Elect one member for 6-year term unless W&SD adopts 4-year terms for its Board Members.	Elect at least two (2), but not more than three (3) members for 2-year terms.
If citizen petition (State), a special election may be called within 6 months to increase the number of board members to five (5).	For County petitions, the County Commission must appoint five (5) initial board directors with staggered terms (two (2) for 1 year, three (3) for 2 years). After the initial appointment, all County directors are elected for 2-year terms and are eligible for election, but no member shall serve more than 2 consecutive terms.
Nominations must be made thirty (30) days prior to election.	
Board appoints judges and makes other necessary arrangements for subsequent elections.	
Notice of election by publication in newspaper.	
Returns certified, canvassed, and declared by board.	